DOCUMENT RESUME

ED 198 757 HE 013 496

TITLE	Uniform Management of Institutional Funds Act.
INSTITUTION	National Association of Coll. and Univ. Business Officers, Washington, D.C.
PUB DATE	Aug 80
NOTE	17p.
AVAILABLE FROM	National Association of College and University Business Officers, One Dupont Circle, Suite 540, Washington, DC 20036.
JOURNAL CIT	NACUBO Administrative Service/Supplement: v2 n2 Aug 1980
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	College Administration; Educational Economics; *Endowment Funds; *Financial Policy; *Governing Boards; Higher Education; *Investment; Legal Responsibility; *Money Management; Nonprofit Organizations; School Funds; *State Legislation
IDENTIFIERS	National Assn College University Business Officers; *Uniform Management of Institutional Funds Act

ABSTRACT

The purpose and provisions of the Uniform Management of Institutional Funds Act are analyzed, and the full text of the Act is presented. The Act was drafted in 1972 to remove uncertainties with respect to the nature of eleemosynary corporations, particularly colleges and universities and to the powers of their governing boards in the area of investment management. The Act provides: (1) a standard of prudent use of appreciation in invested funds; (2) specific investment authority; (3) authority of delegate investment decisions; (4) a standard to business care and prudence to guide governing boards in the exercise of their duties under the Act; and (5) a method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action. The Act is relevant to colleges and universities that have sought to make more effective use of endowment and other investment funds, and which have faced uncertainties in the law in most jurisdictions. The National Association of College and University Business Officers endorsed the Act when it was drafted and encouraged all institutions to assist in obtaining passage by their own state legislatures. Since 1972, the Act has been enacted in 28 states and the District of Columbia. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

NACUBO

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

ED198757

Uniform Management of Institutional Funds Act

The Uniform Management of Institutional Funds Act was drafted in 1972 by the National Conference of Commissioners on Uniform State Laws. The purpose of the model act is to remove uncertainties with respect to the nature of eleemosynary corporations, particularly colleges and universities, and to the powers of their governing boards in the area of investment management. The Act provides:

1. A standard of prudent use of appreciation in invested funds.
2. Specific investment authority.
3. Authority to delegate investment decisions.
4. A standard of business care and prudence to guide governing boards in the exercise of their duties under the Act.
5. A method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

During its deliberations, the drafting committee received the advice and counsel of a number of organizations and individuals. Among them were the American Bar Association, the American Institute of Accountants, and the National Association of College and University Attorneys. NACUBO was represented by Rodney H. Adams, Stanford University; John F. Meck, Dartmouth College; and Marwin O. Wrolstad, Lawrence University.

The NACUBO Board of Directors, on the recommendation of the NACUBO Investment Committee, endorsed the Act when it was drafted and encouraged all institutions to assist in obtaining passage by their own state legislatures. Since 1972, the Act has been enacted in 28 states and the District of Columbia. The NACUBO Investment Committee seeks to insure that information regarding the Act is made available to foundations, banks, portfolio managers, and all others interested in the laws that apply to endowment funds.

The version of the Act which follows contains notes describing variations in the Act among adopting jurisdictions. It should be emphasized, however, that this material may become dated as time passes. Therefore, administrators using these materials should consult with legal counsel before taking action.

Commissioners' Prefatory Note

Over the past several years the governing boards of eleemosynary institutions, particularly colleges and universities, have sought to make more effective use of endowment and other investment funds. They and their counsel have wrestled with questions as to permissible investments, delegation of investment authority, and use of the total return concept in investing endowment funds. Studies of the legal authority and responsibility for the management of the funds of an institution have pointed up the uncertain state of the law in most jurisdictions. There is virtually no

HE013496

Copyright © 1980 NACUBO

statutory law regarding trustees or governing boards of eleemosynary institutions, and case law is sparse. In the late 1960s the Ford Foundation commissioned Professor William L. Cary and Craig B. Bright, Esq., to examine the legal restrictions on the powers of trustees and managers of colleges and universities to invest endowment funds to achieve growth, to maintain purchasing power, and to expend a prudent portion of appreciation in endowment funds. They concluded that there was little developed law but that legal impediments, which have been thought to deprive managers of their freedom of action, appear on analysis to be more legendary than real. (Cary and Bright, *The Law and the Lore of Endowment Funds*, p. 66 (1969).)

Nonetheless it appears that counsel for some colleges and universities have advised to the contrary, basing such advice on analogy to the law of private trusts. Not all counsel, of course, suggest that private trust laws control the governing boards of eleemosynary institutions.

There is, however, substantial concern about the potential liability of the managers of institutional funds even though cases of actual liability are virtually nil. As deliberations of the special committee, the advisory committee, and the reporters responsible for the preparation of this Act progressed, it became clear that the problems were not unique to educational institutions but were faced by any

---

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
California	1973, c. 950	9-30-1973, 1-1-1979	West's Ann. Civ. Code, §§ 2290.1 to 2290.12.
Colorado	1973, c. 126	7-1-1973	C.R.S. '73, 15-1-1101 to 15-1-1109.
Connecticut	1973, P.A. 73-548	6-11-1973*	C.G.S.A. §§ 45-100h to 45-100p.
Delaware	1974, c. 572	7-29-1974	12 Del.C. §§ 4701 to 4708.
Dist. of Columbia	D.C. Laws No. 1-103	4-6-1977	
Illinois	1973, P.A. 78-866	10-1-1973	S.H.A. ch. 32, §§ 1101 to 1110.
Kansas	1973, c. 226	7-1-1973	K.S.A. 58-3601 to 58-3610.
Kentucky	1976, c. 115	6-19-1976	KRS 273.510 to 273.590.
Louisiana	1976, No. 410	7-31-1976*	LSA-R.S. 9:2337.1 to 9:2337.8.
Maine	1973, c. 95	1973	R.S.T. 13.
Maryland	1973, c. 838	7-1-1973	Code, Estates and Trusts, §§ 15-401 to 15-409.
Massachusetts	1975, c. 886	1-17-1976*	M.G.L.A. c. 180A §§ 1 to 11.
Michigan	1976, P.A. 157	6-17-1976	M.C.L.A. §§ 451.1201 to 451.1210.
Minnesota	1973, c. 313	8-1-1973*	M.S.A. §§ 309.62 to 309.71.
Missouri	1976, c. 402	8-13-1976	§ 402.010-402.055.
Montana	1973, c. 389	3-20-1973*	R.C.M. 1947, §§ 86-801 to 86-809.
New Hampshire	1973, c. 547:1	9-1-1973	RSA 292-B:1 to 292-B:9.
New Jersey	1975, c. 26	3-5-1975	N.J.S.A. 15:18-15 to 15:18-24.
New York	1978, c. 690	7-25-1978	McKinney's N-PCL. §§ 102, 512, 514, 522.
North Dakota	1975, c. 182	7-1-1975	NDCC 15-67-01 to 15-67-09.
Ohio	1975, p. 303	11-26-1975	R.C. §§ 1715.51 to 1715.59.
Oregon	1975, c. 707	9-13-1975	ORS 128.310 to 128.355.
Rhode Island	1972, c. 260	5-4-1972	Gen. Laws 1956, §§ 18-12-1 to 18-12-9.
Tennessee	1973, c. 177	5-7-1973	T.C.A. §§ 35-1101 to 35-1109.
Vermont	1973, No. 59	7-1-1973	14 V.S.A. §§ 3401 to 3407.
Virginia	1973, c. 167	3-10-1973*	Code 1950, §§ 55-268.1 to 55-268.10.
Washington	1973, c. 17	6-7-1973*	RCWA 24.44.010 to 24.44.900.
West Virginia	1979	6-8-1979	S.B. 88.
Wisconsin	1975, c. 247	5-15-1976	W.S.A. 112.10.

*Date of approval.

charitable, religious, or other eleemosynary institution that owned a fund to be invested.

One further problem regularly intruded on the discussion of efforts to free trustees and managers from the alleged limitations on their powers to invest for growth and meet the financial needs of their institutions. Some gifts and grants contained restrictions on use of funds or selection of investments that imperiled the effective management of the fund. An expeditious means to modify obsolete restrictions seemed necessary.

The Uniform Act offers a rational solution to these problems by providing:

1. A standard of prudent use of appreciation in invested funds.
2. Specific investment authority.
3. Authority to delegate investment decisions.
4. A standard of business care and prudence to guide governing boards in the exercise of their duties under the Act.
5. A method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

Use of Appreciation

The argument for allowing prudent use of appreciation of endowment funds has been stated in Cary and Bright, *The Law and the Lore of Endowment Funds,* pp. 5-6 (1969):

> [T]oo often the desperate need of some institutions for funds to meet current operating expenses has led their managers, contrary to their best long-term judgment, to forego investments with favorable growth prospects if they have a low current yield.
>
> [I]t would be far wiser to take capital gains as well as dividends and interest into account in investing for the highest overall return consistent with the safety and preservation of the funds invested. If the current return is insufficient for the institution's needs, the difference between that return and what it would have been under a more restrictive policy can be made up by the use of a prudent portion of capital gains.

The Uniform Act authorizes expenditure of appreciation subject to a standard of business care and prudence. It seems unwise to fix more exact standards in a statute. To impose a greater constriction would hamper adaptation by different institutions to their particular needs.

The standard of care is that of a reasonable and prudent director of a nonprofit corporation—similar to that of a director of a business corporation—which seems more appropriate than the traditional Prudent Man Rule applicable to private trustees. The approach has been used elsewhere. A New York statute allows inclusion in income of "so much of the realized appreciation as the board may deem prudent"; New York [McKinney's] Not-for-Profit Corporation Law § 513(d) (1970). Certain enactments in New Jersey, California, and Rhode Island follow the same pattern; N.J.S.A. § 15:18-8; West's Anno. Corp. Code § 10251(c) (Calif.); Gen. Laws of R.I. § 18-2-2.

The Act authorizes the appropriation of net appreciation. "Realization" of gains and losses is an artificial, meaningless concept in the context of a nontaxable eleemosynary institution. If gains and losses had to be realized before being taken into account, a major objective of the Act, to avoid distortion of sound investment

policies, would be frustrated. If only realized capital gains could be taken into account, trustees or managers might be forced to sell their best assets, appreciated property, in order to produce spendable gains and conceivably might spend realized gains even when, because of unrealized losses, the fund has no net appreciation.

The Act excludes interests held for private beneficiaries, even though a charity is the ultimate beneficiary, for example, an individual life interest followed by a charitable remainder. Also excluded is any trust managed by a professional trustee even though a charitable organization is the sole beneficiary.

The Uniform Act has been drafted to meet the objection that there will be a decline in gifts to charity because donors cannot rely on their wishes being enforced if appreciation can be expended. The drafters were convinced that donors seldom give any indication of how they want the growth in their gifts to be treated. If, however, a donor does indicate a wish to limit expenditures to ordinary yield, under the Act the wish will be respected.

A statute such as this can be constitutionally applied to gifts received prior to its enactment. There is no substantial authority to be found in law or reason for denying retroactive application.

When the Uniform Principal and Income Act was adopted, it changed the apportionment of some items of revenue between principal and income. It was argued that the retroactive application of the statute to existing trusts would deprive either the income beneficiaries or the remaindermen of their property without due process of law. Professor Scott spoke for the overwhelming majority of commentators when he said:

> [T]here should be no constitutional objection to making the Act retroactive. The rules as to allocation should not be treated as absolute rules of property law, but rather as rules as to the administration of the trust. The purpose is to make allocations which are fair and impartial as between the successive beneficiaries. (Scott, "Principal or Income?" 100 Trusts & Estates 180, 251 (1961).)

Professor Bogert reached the same conclusion. (See Bogert, *The Law of Trusts and Trustees* § 847, pp. 505-6 (2d ed. 1962).) The courts that considered the matter reached the same conclusion.

There is even less reason to deny retroactive application to an apportionment statute that deals only with the endowment funds of eleemosynary institutions, because the statute does not deprive any beneficiary of vested property rights. In a broad sense, the public is the real beneficiary of an endowment fund. The only argument that can be made against retroactivity is that it might violate the intent of the donor. Such an argument was also made in respect of the Uniform Principal and Income Act, but it was uniformly rejected by the courts. The language of a Minnesota case is typical:

> [I]t is doubtful whether testatrix had any clear intention in mind at the time the will was executed. It is equally plausible that if she had thought about it at all she would have desired to have the dividends go where the law required them to go at the time they were received by the trustee.... *In re Gardner's Trust,* 266 Minn. 127, 132, 123, N.W.2d 69, 73 (1963).

In any event, the Act does not raise a problem of retroactive application because the rule of construction of Section 3 is declaratory of existing law in that it interprets

the presumed intent of the donor in the absence of a clear statement of the donor's intention.

Other similar acts follow the same pattern. The New York [McKinney's] Not-for-Profit Corporation Law Section 513(e) (1970) authorizing the expenditure of appreciation applies to assets "held at the time when this chapter takes effect" as well as to "assets hereafter received." Similar language appears in the New Jersey, California, and Rhode Island acts authorizing expenditure of appreciation by eleemosynary institutions.

Specific Investment Authority

It seems reasonably clear that investment managers of endowment funds are not limited to investments authorized to trustees. The broad grant of investment authority contained in Section 4 of the Act expressly so provides.

Authority to Delegate

In the absence of clear law relating to the powers of governing boards of eleemosynary institutions, some boards have been advised that they are subject to the nondelegation strictures of professional private trustees. The board of an eleemosynary institution should be able to delegate day-to-day investment management to committees or employees and to purchase investment advisory or management services. The Act so provides.

Standard of Care

Fear of liability of a private trustee may have a debilitating effect on members of a governing board, who are often public-spirited citizens serving without compensation. They are managers of nonprofit corporations, guiding a unique and perhaps very large institution. The proper standard of responsibility is more analogous to that of a director of a business corporation than that of a professional private trustee. The Act establishes a standard of business care and prudence in the context of the operation of a nonprofit institution.

Release of Restrictions

It is established law that the donor may place restrictions on his or her largesse which the donee institution must honor. Too often, the restrictions on use or investment become outmoded or wasteful or unworkable. There is a need for review of obsolete restrictions and a way of modifying or adjusting them. The Act authorizes the governing board to obtain the acquiescence of the donor to a release of restrictions and, in the absence of the donor, to petition the appropriate court for relief in appropriate cases.

Conclusion

As early as 1960, Professor Kenneth Karst in an article in the Harvard Law Review stated the need for the Uniform Act:

> [T]he managers of corporate charity are still, at this late date, without adequate guides for conduct. The development of these standards is of some urgency. ("The Efficiency of the Charitable Dollar: An Unfilled State Responsibility," 73 *Harvard Law Review,* pp. 433, 435 (1960).)

GENERAL STATUTORY NOTES

Maine. The Maine Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions, and additional matter that cannot be clearly indicated by statutory notes.

Massachusetts. Adds sections as follows:

"Accumulation of annual net income; reserve

"The governing board may accumulate so much of the annual net income of an institutional fund as is prudent under the standard established by section eight, and may hold any or all of such accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which such institutional fund is established or may add any or all of such accumulated income to the principal of such institutional fund, as is prudent under said standard. This section does not limit the authority of the governing board to accumulate income or to add the same to principal of an institutional fund as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution."

"Restrictions in gift instruments against accumulation of income or addition to principal

"Section four does not apply if and to the extent that the applicable gift instrument indicates the donor's intention that income of an institutional fund shall not be accumulated or shall not be added to the principal of the fund. A restriction against accumulation or addition to principal may not be implied from a designation of a gift as an endowment fund, or from a direction or authorization in the applicable gift instrument to apply to the uses and purposes of the fund the 'income', 'interest', 'dividents', 'currently expendable income', or 'rent, issues, or profits', or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this section."

Michigan. Adds a section as follows:

"M.C.L.A. § 451.1210

"This act shall not be construed to prevent an institution otherwise authorized by the terms of the applicable gift instrument establishing an endowment fund, or not prohibited by the terms of the applicable gift instrument establishing an institutional fund which is not an endowment fund, from making an investment or guaranteeing the obligations of others to further the educational, religious, charitable, or other eleemosynary purpose of the institution, regardless of whether any financial return is anticipated or any capital gain or loss is actually incurred."

New Hampshire. Adds section as follows: "292-B:1 Declaration of Purpose. It is hereby declared to be in the public interest and to be the policy of the state to promote, by all reasonable means, the maintenance and growth of eleemosynary institutions by encouraging them to establish and continue investment policies, without artificial constraints, which will provide them with the means to meet the present and future needs of such eleemosynary institutions pursuant to the provisions of this act. To this end it is hereby declared to be in the public interest and to be the policy of the state to encourage such institutions to adopt investment policies whose objective is to obtain the highest possible total rate of return consistent with the standard of prudence."

Rhode Island. The Rhode Island Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions, and additional matter that cannot be clearly indicated by statutory notes.

NOTE: "Action in Adopting Jurisdictions" notes on following pages reproduced with permission from Volume 7A *Uniform Laws Annotated*, Master Edition, Copyright © 1978 by West Publishing Co.

Administrative Service supplements document principles, policies, practices and procedures in the field of college and university management. They provide additional information about subject fields or offer specific guidance in regard to generally accepted principles and policies. Supplements are the result of a comprehensive review process modeled after that used for the basic chapters of the Service.

Uniform Management of Institutional Funds Act

An Act to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.
[*Be it enacted...*]

SECTION 1. [*Definitions.*] In this Act:

(1) "institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

Commissioners' Comment

The Uniform Act applies generally to colleges, universities, hospitals, religious organizations, and other institutions of an eleemosynary nature. It applies to a governmental organization to the extent that the organization holds funds for the listed purposes, for example, a public school that has an endowment fund.

A nongovernmental institution that is not "charitable" in the classic sense is not within the Act, even though it may hold funds for such purpose. If the fund is separate and distinct from the noncharitable organization, the fund itself may be an institution to which the Act applies.

(2) "institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (i) a fund held for an institution by a trustee that is not an institution or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise on violation or failure of the purposes of the fund;

Commissioners' Comment

An institutional fund is any fund held by an institution which it may invest for a long or short term. Excluded from the Act is any fund held by a trustee which is not an institution as defined in this Act, for example, a bank or trust company, for the benefit of an institution even though the institution is the sole beneficiary.

A fund held by an institution for the benefit of any noninstitutional beneficiary is also excluded. The exclusion would apply to any fund with an individual beneficiary such as an annuity trust or a unitrust. When the interest of a noninstitutional beneficiary is terminated, the fund may then become an institutional fund.

The phrase "use, benefit, or purposes" of an institution broadly encompasses all of the activities permitted by its charter or other source of authority. A fund to provide scholarships for students or medical care for indigent patients is held by the school or hospital for the institution's purposes. Such a fund is not deemed to be held for the benefit of a particular student or patient as distinct from the use, benefit, or purposes of the institution, nor does the student or patient have an interest in the fund as a "beneficiary that is not an institution."

The particular recipient of the aid of a charitable organization is not a "beneficiary" in the sense of a beneficiary of a private trust; only the Attorney General or similar public authority may enforce a charitable trust. (4 *Scott, Law of Trusts* § 348 pp. 2768-9 (3d ed. 1967); Bogert, *The Law of Trusts and Trustees* § 411-15 pp. 317-348 (2d ed. 1962).)

(3) "endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

Commissioners' Comment

An endowment fund is an institutional fund, or any part thereof, which is held in perpetuity or for a term and which is not wholly expendable by the institution. Implicit in the definition is the continued

maintenance of all or a specified portion of the original gift. "Endowment fund" is specially defined because it is subject to the appropriation rules of Section 2.

A restriction on use that makes a fund an endowment fund arises only from the applicable gift instrument. If a governing board has the power to spend all of a fund but, in its discretion, decides to invest the fund and spend only the yield or appreciation therefrom, the fund does not become an endowment fund under this definition, but it may be described as a "quasi-endowment fund" or a "fund functioning as endowment."

A fund which is not an institutional fund originally and therefore not an endowment fund may become an endowment fund at a later time. For example, a fund given to an institution to pay the grantor's widow a life income, with the remainder to the institution, would become an institutional fund on the widow's death, and, if the fund were not then wholly expendable, it would become an endowment fund at that time.

If a gift instrument provided that the institution could use the income from the fund for ten years and thereafter spend the entire principal, the fund would be an endowment fund for the ten-year period and would cease to be an endowment fund at the time it became wholly expendable.

(4) "governing board" means the body responsible for the management of an institution or of an institutional fund;

Commissioners' Comment

The definition is meant to designate the policy making or management group that has the responsibility for the affairs of the institution or the fund.

(5) "historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

Commissioners' Comment

"Historic dollar value" is simply the value of the fund expressed in dollars at the time of the original contribution to the fund plus the dollar value of any subsequent gifts to the fund. Accounting entries recording realization of gains or losses to the fund have no effect upon historic dollar value. No increase or decrease in historic dollar value of the fund results from the sale of an asset held by the fund and the reinvestment of the proceeds in another asset.

If the gift instrument directs accumulation, the historic dollar value will increase with each accumulation. For example, if a donor gives an institution $300,000 and directs that the fund is to be accumulated until its value reaches $500,000, the historic dollar value will be the aggregate value of $500,000 at the time the fund becomes available for use by the institution.

If under the terms of the gift instrument a portion of an endowment fund, after passage of time or on the happening of some event, becomes currently wholly expendable, such portion should be treated as a separate fund and the historic dollar value of the remaining endowment fund should be reduced proportionately.

(6) "gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

Commissioners' Comment

A gift instrument establishes the terms of the gift. It may be a writing of any form, or it may result from the institution's solicitation activities, or the by-laws, or other rules of an existing fund.

Action in Adopting Jurisdictions

Variations from Official Text:

California: In subsec. (1), defines "Institution" as "a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes."

Subsec. (5) reads: " 'Historic dollar value' means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund."

Colorado. In subsec. (4), omits "of an institution or."

In subsec. (6), omits "writing."

Connecticut. In subsec. (1), includes a charitable community trust as described in section 45-81 within the definition of institution.

In subsec. (2), inserts "other than a fund which is held for a charitable community trust" following "not an institution" in clause (i).

Subsec. (5) reads: " 'Historic dollar value' means the aggregate fair value in dollars of

"(A) an endowment fund at the time it become an endowment fund,

"(B) each subsequent donation to the fund at the time it is made, and

"(C) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

"The determination of historic dollar value made in good faith by the institution is conclusive."

Kansas. Subsec. (5) reads: "(5) 'historic dollar value' means the fair value in dollars of an endowment fund at the time it first became an endowment fund, plus the fair value in dollars of each subsequent donation to the fund at the time it is made, plus the fair value in dollars of each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive."

Louisiana. In subsec. (6), inserts "donation," following "grant,".

Minnesota. Omits subsec. (4).

Subsec. (5) reads: " 'Historic dollar value' means the aggregate fair value in doliars of (a) an endowment fund at the time it became an endowment fund, (b) each subsequent donation to the fund at the time it is made, and (c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive."

Montana. Subsec. (5) reads: " 'Historic dollar value' means the aggregate fair value in dollars of

"(a) an endowment fund at the time it became an endowment fund,

"(b) each subsequent donation to the fund at the time it is made, and

"(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

"The determination of historic dollar value made in good faith by the institution is conclusive."

New Jersey. In subsec. (1), inserts "hospital" following "charitable,".

North Dakota. In subsec. (2), includes a perpetual trust fund established by section 153 of the constitution of the state of North Dakota within the definition of "institutional fund."

Ohio. In subsec. (1), substitutes "or religious" for "religious, charitable, or other eleemosynary" and "either" for "any," and adds sentence as follows: "Such definitions do not apply to Section 109.23 of the Revised Code."

In subsec. (2), clause (ii) omits "other than possible rights that could arise upon violation or failure of the purposes of the fund."

Oregon. In subsec. (1), defines "institution" as "an incorporated or unincorporated nonpublic organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes."

Rhode Island. Section reads: "A. 'Institutional fund' means any fund held by an institution for its exclusive use, benefit, or purposes. It does not include any fund in which any beneficiary other than the institution has an interest until the interest of the other beneficiary has terminated.

"B. ['Endowment fund['] means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

"C. 'Institution' means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes and a governmental organization to the extent that it hold funds exclusively for these purposes.

"D. 'Governing board' means the group of individuals responsible for the overall management of an institution, or an institutional fund, whether denominated as trustees, directors, managers, regents, wardens, or other words of similar import.

"E. 'Historic dollar value' means the initial value in dollars of an endowment fund at the time it first became an endowment fund plus the value in dollars of each subsequent gift, grant, or other addition to the fund as of the time the same was added to the fund, except that in the case of an endowment fund in existence at [May 4, 1972], 'historic dollar value' means the value in dollars of such endowment fund on May 4, 1972 or, at the option of the institution, the value at the close of the fiscal year of the institution either preceding said date by one (1) or two (2) years, plus the value in dollars of each subsequent gift, grant, or other addition to the fund as of the time the same is added to the fund. The historic dollar value of an endowment fund shall furthermore be prudently adjusted from time to time to reflect the change, if any, in the purchasing power of the historic dollar value of said fund.

"F. 'Gift instrument' means any will, deed, grant, conveyance, agreement, or other governing document (including the terms of any institutional solicitation from which an institutional fund resulted) under which property is transferred to or held by an institution for its exclusive use, benefit, or purposes."

Vermont. In subsec. (5), makes some language changes without affecting substance.

SECTION 2. [*Appropriation of Appreciation.*] The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 6. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

Commissioners' Comment

This section authorizes a governing board to expend for the purposes of the fund the increase in value of an endowment fund over the fund's historic dollar value, within the limitations of Section 6, which establishes a standard of business care and prudence.

The section does not apply to funds that are wholly expendable by the institution such as so-called "quasiendowment funds" or "funds functioning as endowment," nor does the section limit or reduce any spending power granted by a gift instrument or otherwise held by the institution.

Unrealized gains and losses must be combined with realized gains and losses to insure that the historic dollar value is not impaired.

Action in Adopting Jurisdictions

Variations from Official Test:

California. Adds sentence which reads: "Appropriations shall be based on an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year." Omits "and unrealized."

Delaware. Makes some language changes without affecting substance.

Kansas. Omits "and unrealized."

Massachusetts. Adds the following at the end of the first sentence: "provided, however, the appropriation of net appreciation for expenditure in any year in an amount greater than seven percent of the fair market value of the institution's endowment funds, calculated on the basis of market values determined at least quarterly and averaged over a period of three or more years, shall create a rebuttable presumption of imprudence on the part of the governing board."

Ohio. Section reads: "The governing board of an institution may appropriate for expenditure for the uses and purposes for which an endowment fund is established up to fifty percent of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund, but only so much of such fifty percent of the net appreciation as is prudent under the standard established by section 1715.56 of the Revised Code. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution."

Rhode Island. Section reads: "In order to permit investments which do not have a high annual cash return while preserving the institution's right to a prudent amount of annual income, the governing board of an institution may from time to time appropriate to the uses and purposes for which an endowment fund was established so much of the net realized and unrealized appreciation in the market value of the endowment fund over the historic dollar value of the fund as is prudent under the standard established by § 18-12-6. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution."

SECTION 3. [*Rule of Construction.*] Section 2 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction on the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this Act.

Commissioners' Comment

If a gift instrument expresses or otherwise indicates the donor's intention that the governing board may not appropriate the appreciation in the value of the fund, the donor's wishes will govern.

The rule of construction of this section is based on the assumption that a grantor who makes an outright gift to an educational, religious, charitable, or other eleemosynary institution seldom makes a full statement of his or her intentions and that the unstated intention is usually quite different from the intention of a grantor who makes a gift to a trust for private beneficiaries. The assumption is that the grantor of a gift to an institution: (1) means to devote to the institution any return or benefit that the institution can obtain from the gift, (2) acknowledges the responsibility of the institutional management to determine the prudent use of the return or benefit over time, and (3) usually regards the "amount" of the gift as the dollars given or the dollar value of the property transferred to the institution at the time of the gift. Thus, in the case of a gift instrument which states no clear intention or merely echoes the rubrics of a private trust, the statutory rule of interpretation should apply.

Some advisers to institutions, aware of the body of private trust law, have interpreted references to "income" or "principal" in a gift instrument to evidence a grantor's intent that the private trust rules developed to insure equity between an income beneficiary and a remainderman should be applied to an outright gift to an institutional donee. Neither the facts of donor's intentions nor the law of trusts support such an interpretation of the meaning of gift instruments where an institution is the sole beneficiary.

This section does not purport to change existing law or rights; it simply codifies a rule of construction or interpretation or administration by articulating the presumed intent of a donor in the absence of a statement of the donor's actual intent.

Action in Adopting Jurisdictions

Variations from Official Text:

California. Section reads:

"(a) Section 2290.2 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

"(b) With respect to gift instruments in effect prior to the effective date of this section, a restriction upon the expenditure of net appreciation need not be implied solely from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only 'income,' 'dividends,' or 'rents, issues, or profits,' or 'to preserve the principal intact,' or a direction which contains other words of similar import.

"(c) With respect to gift instruments executed or becoming effective after the effective date of this section, a restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only 'income,' 'interest,' 'dividends,' or 'rents, issues, or profits,' or 'to preserve the principal intact,' or a direction which contains other words of similar import."

Colorado. Substitutes "all gift instruments whenever executed" for "gift instruments executed or in effect before or after the effective date of this act."

Louisiana. Inserts "usufruct," following "dividends," and "or to preserve the naked ownership intact," following "to preserve the principle intact,."

New Hampshire. In sentence beginning: "This rule of construction," omits "before or."

Ohio. Section reads: "Section 1715.52 of the Revised Code does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended."

Washington. Omits this section.

SECTION 4. [*Investment Authority.*] In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

1. Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof.
2. Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

3. Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.
4. Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

Commissioners' Comment

Institutional investment managers suggest that a general grant of investment powers will clarify the authority of a governing board to select investments. Subsection (1) provides broad powers of investment and states that a governing board is not restricted to investments authorized to trustees.

Two other matters of investment policy have been troublesome to boards because of the absence of specific authority. Subsections (2) and (3) provide authority to hold property given by a donor even though it may not be the best investment (ordinarily in the hope of obtaining additional contributions) and to invest in common or pooled investment funds such as the Common Fund for Nonprofit Organizations. (See 4 Scott, *Law of Trusts* § 389 pp. 2997-3000 (3d ed. 1967).)

The absence of specific reference to investment for return by an institution in its own facilities does not limit the power of a governing board to make such investments under the general clause of Section 4 (1), or other law or the gift instrument.

Section 6 establishes the standard of care and prudence under which the investment authority is exercised.

Action in Adopting Jurisdictions

Variations from Official Text:

California. Introductory clause reads: "In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the applicable gift instrument, may do any or all of the following":

In subsec. (1), inserts "or individuals," following "partnerships."

Colorado. In introductory clause, substitutes "is authorized to make" for "may make" and "a fiduciary is authorized to make" for "by a fiduciary."

In subsec. (1), omits "debentures."

Kansas. In introductory clause, substitutes "is authorized to make" for "may make" and "a fiduciary is authorized to make" for "by a fiduciary."

Louisiana. In subsec. (1), substitutes "corporeal or incorporeal immovable or movable" for "real or personal."

New Hampshire. Subsec. (3) reads: "Include all or any part of an institutional fund or all or any part of a pooled income fund (as defined in Section 642(c)(5) of the Internal Revenue Code of 1954 as amended ('the Code')), as charitable remainder annuity trust (as defined in Section 664(d)(1) of the Code), or a charitable remainder antitrust (as defined in Section 664(d)(2) of the Code) in one or more pooled or common funds maintained by the institution; and"

In subsec. (4), inserts "pooled income fund, charitable remainder annuity trust or charitable remainder antitrust" following "part of an institutional fund."

Ohio. In introductory clause, inserts "of an institution" following "governing board."

In subsec. (4), adds sentence as follows: "All institutional funds held by a governmental organization shall be audited by the auditor of state."

SECTION 5. [*Delegation of Investment Management.*] Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds; (2) contract with independent investment advisors, investment counsel, or managers, banks, or trust companies, so to act; and (3) authorize the payment of compensation for investment advisory or management services.

Commissioners' Comment

Questions have arisen about the power of a governing board to delegate investment decisions. In the absence of authority, some boards have tried to follow the nondelegation principles applicable to

trustees. Governing boards do, in fact, delegate investment authority, sometimes with rather cumbersome procedures to produce a record of apparent decisions by the boards.

This section clarifies the authority to delegate investment management and to purchase investment advisory and management services. Responsibility for investment policy and selection of competent agents remains with the board under the Section 6 standard of business care and prudence.

Action in Adopting Jurisdictions

Variations from Official Text:

Michigan. In clause (2), substitutes "to act in place of the board in investment and reinvestment of institutional funds" for ", so to act,".

Ohio. Inserts "of an institution" following "governing board."

Oregon. Omits exception clause.

SECTION 6. [*Standard of Conduct.*] In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

Commissioners' Comment

The section establishes a standard of care and prudence for a member of a governing board. The standard is generally comparable to that of a director of a business corporation rather than that of a private trustee, but it is cast in terms of the duties and responsibilities of a manager of a nonprofit institution.

Officers of a corporation owe a duty of care and loyalty to the corporation, and the more intimate the knowledge of the affairs of the corporation the higher the standard of care. Directors are obligated to act in the utmost good faith and to exercise ordinary business care and prudence in all matters affecting the management of the corporation. This is a proper standard for the managers of a nonprofit institution, whether or not it is incorporated.

The standard of Section 6 was derived in part from Proposed Treasury Regulations § 53.4944-1(a)(2) dealing with the investment responsibility of managers of private foundations.

The standard requires a member of a governing board to weigh the needs of today against those of the future.

Action in Adopting Jurisdictions

Variations from Official Text:

California. Section reads: "In investing, reinvesting, purchasing, acquiring, exchanging, selling and managing property, appropriating appreciation and delegating investment management for the benefit of an institution, the members of the governing board shall exercise the judgment, care and prudence, under the circumstances then prevailing, which men of discretion and intelligence exercise in the management of their affairs. In exercising judgment under this section, the members of the governing board shall consider the long and short term needs of the institution in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long term net appreciation, as well as the probable safety of funds."

Colorado. Omits "business" preceding "care and prudence."

Massachusetts. Section reads:

"In the administration of the powers to appropriate appreciation, to accumulate income, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall consider long and short term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, the problems peculiar to the institution, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

"No member of the governing board shall be liable for any action taken or omitted with respect to such appropriation or accumulation or with respect to the investment of institutional funds, including endowment funds, under the authority granted in this chapter, if such member shall have discharged the duties of his position in good faith and with that degree of diligence, care and skill which prudent men would ordinarily exercise under similar circumstances in a like position."

Michigan. Section reads:

"(1) In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Persons to whom the governing board has delegated authority, or with whom the governing board has contracted, to act in its place in investment and reinvestment of institutional funds shall exercise ordinary business care and prudence under the facts and circumstances prevailng at the time of the action or decision.

"(2) In exercising ordinary business care and prudence pursuant to subsection (1), the governing board or person to whom investment or reinvestment authority is delegated or with whom such authority is contracted shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions."

New Hampshire. Adds the following: "Provided, however, the appropriation of appreciation in any years in an amount greater than seven percent of the fair market value of the assets of the institution's endowment funds (calculated on the basis of market values determined at least quarterly and averaged over a period of three or more years) shall create a rebuttable presumption of imprudence on the part of the governing board."

Ohio. Inserts "of an institution" following "governing board" and substitutes "or religious" for ", religious, charitable, or other eleemosynary."

Notes of Decisions

1. Diversification of investments. Trustee is under a duty to beneficiary to distribute risk of loss by reasonable diversification of investments unless under circumstances it is prudent not to do so. Matter of Estate of Collins, 1977, 133 Cal. Rptr. § 44.73 C.A. 3d § 63.

SECTION 7. [*Release of Restrictions on Use or Investment.*]

(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his or her death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the [appropriate] court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The [Attorney General] shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of *cy pres.*

Commissioners' Comment

One of the difficult problems of fund management involves gifts restricted to uses that cannot be feasibly administered or to investments that are no longer available or productive. There should be an expeditious way to make necessary adjustments when the restrictions no longer serve the original purpose. *Cy pres* has not been a satisfactory answer and is reluctantly applied in some states. (See *Restatement of Trusts* (2d), §§ 381, 399; 4 Scott, *Law of Trusts* § 399 p. 3084, § 399.4 pp. 3119 et seq. (3d ed. 1967).)

This section permits a release of limitations that imperil efficient administration of a fund or prevent sound investment management if the governing board can secure the approval of the donor or the appropriate court.

Although the donor has no property interest in a fund after the gift, nonetheless if it is the donor's limitation that controls the governing board and he or she agrees that the restriction need not apply, the board should be free of the burden. (See *Restatement of Trusts* (2d) § 367.) Scott suggests that in minor matters, the consent of the settlor may be effective to remove restrictions upon the trustees in the administration of a charitable trust. (4 Scott, § 367.3 p. 2846 (3d ed. 1967).)

If the donor is unable to consent or cannot be identified, the appropriate court may upon application of a governing board release a limitation which is shown to be obsolete, inappropriate, or impracticable.

This section authorizes only a release of a limitation. Thus, if a fund were established to provide scholarships for students named Brown from Brown County, Iowa, a donor might acquiesce in a reduction of the limitation to enable the institution to offer scholarships to students from Brown County who are not named Brown, or to students from other counties in Iowa or to students from other states, or he or she could acquiesce in the release of the restriction to scholarships so that the fund could be used for the general educational purposes of the school.

Subsection (d) makes it clear that the Act does not purport to limit the established doctrine of *cy pres*. A liberalization of, addition to, or substitute for *cy pres* is not without respectable support. Professor Kenneth Karst in "The Efficiency of the Charitable Dollar: An Unfilled State Responsibility," 73 *Harv. L. Rev.* 433 (1960) suggested that the doctrine of *cy pres* be expanded to permit the courts to redirect charitable grants if the purposes had become "obsolete, or useless, or prejudicial to the public welfare, or are insignificant in comparison with the magnitude of the endowment..." quoting from the Nathan Report (of the British Committee on the Law and Practice Relating to Charitable Trusts, Cmd. 8710, 1952) quoting the Scotland Education Act 1946, 9-10 Geo. 6, ch. 72 § 119 (b). The Uniform Act provision is far less broad; it applies only to the release of restrictions on the gift under limited circumstances.

New England courts apply a rather strict doctrine of separation of powers to deny legislative encroachment on judicial *cy pres*. The Uniform Act is compatible with the New England cases because the final decision is in the courts. (See *City of Hartford v. Larrabee Fund Association*, 161 Conn. 312, 288 A. 2d 71 (1971); Opinion of Justices, 101 N.H. 531, 133 A. 2d 792 (1957).)

No federal tax problems for the donor are anticipated by permitting release of a restriction. The donor has no right to enforce the restriction, no interest in the fund and no power to change the eleemosynary beneficiary of the fund. He or she may only acquiesce in a lessening of a restriction already in effect.

Action in Adopting Jurisdictions

Variations from Official Text:

California. Among other changes, provides that if written consent of the donor cannot be obtained, the governing board may apply for release of a restriction imposed by the applicable gift instrument.

Colorado. Section reads:

"(1) A restriction on the use of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by the governing board with the written consent of the donor.

"(2) If consent of the donor cannot be obtained by reason of death, disability, unavailability, or impossibility of identification of the donor, upon application of the governing board, a restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by order of the district court after reasonable notice to the attorney general and an opportunity for him or her to be heard, and on a finding that the restriction on the use or investment of the fund is obsolete, inappropriate, or impracticable. A release under this subsection (2) may not change an endowment fund to a fund that is not an endowment fund.

"(3) A release under this section may not allow a fund to be used for purposes other than educational, religious, or other eleemosynary purposes of the institution affected.

"(4) The provisions of this section do not limit the application of the doctrine of *cy pres*."

Connecticut. Subsec. (b) reads:

"If written consent of the donor cannot be obtained by reason of his or her death, disability, unavailability or impossibility of identification, the governing board may apply, in the name of the institution, to the superior court for a county or judicial district in which the institution conducts its affairs for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund."

In subsec. (d), adds "or approximation" following "*cy pres*."

District of Columbia. In subsec. (b), provides that the Corporation Counsel of the District of Columbia shall be notified of the application and shall be given an opportunity to be heard and further that the Attorney General of the United States shall be notified of the application and shall be given an opportunity to be heard when a Federal interest in the application or the institution is asserted.

Illinois. Omits subsec. (b).

Kansas. Subsec. (a) reads: "*(a)* A restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by the governing board with the written consent of the donor."

Subsec. (b) reads: "*(b)* If consent of the donor cannot be obtained by reason of the death, disability or unavailability, or impossibility of identification of the donor, upon application of the governing board, a restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by order of the district court after reasonable notice to the attorney general and an opportunity for him or her to be heard, and upon a finding that the restriction on the use or investment of the fund is obsolete, inappropriate or impracticable. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund."

Louisiana. In subsec. (b), inserts "by petition" following "may apply" and substitutes for sentence beginning "The [Attorney General]", the following: "Notification of interested parties shall be made in accordance with R.S. 9:2332."

Maine. Omits section 7.

Michigan. In subsec. (b), inserts "or legal incapacity" following "disability."

In subsec. (c), substitutes "shall" for "may."

Minnesota. Subsec. (2) reads: "If written consent of the donor cannot be obtained by reason of his or her death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund."

Montana. Section reads:

"(1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

"(2) If written consent of the donor cannot be obtained by reason of his or her death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

"(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

"(4) This section does not limit the application of the doctrine of *cy pres.*"

New Hampshire. In subsec. (d), adds "or deviation of trust" at the end thereof.

Ohio. In subsec. (a), inserts "of an institution" following "governing board."

Subsec. (b) reads: "If written consent of the donor cannot be obtained by reason of his or her death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund; the attorney general is a necessary party to and shall be served with process in all such proceedings. A judgment rendered in such proceedings without service or process upon the attorney general is void. If the court finds that the restriction is obsolete or impossible, it may by order release the restriction in whole or in part. A release under this division may not change an endowment fund to a fund that is not an endowment fund."

In subsec. (c), substitutes "or religious" for ", religious, charitable, or other eleemosynary."

Vermont. Subsec. (a) reads as follows: "With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund."

Subsec. (b) reads as follows: "If written consent of the donor cannot be obtained by reason or his or her death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the county court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund."

SECTION 8. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

SECTION 9. [*Uniformity of Application and Construction.*] This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 10. [*Short Title.*] This Act may be cited as the "Uniform Management of Institutional Funds Act."

SECTION 11. [*Repeal.*] [None as of July 31, 1980.]